

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



DATE July 28, 1995

ALL-COUNTY LETTER NO. 95-37

TO: ALL COUNTY WELFARE DIRECTORS

REASON FOR THIS TRANSMITTAL

- ☐ State Law Change
- ☐ Federal Law or Regulation Change
- ☐ Court Order or Settlement Agreement
- ☐ Clarification Requested by One or More Counties
- ☒ Initiated by SDSS

SUBJECT: AID TO FAMILIES WITH DEPENDENT CHILDREN AND FOOD STAMP
ADMINISTRATIVE DISQUALIFICATION HEARING PROGRAM - FORMS

REFERENCE: MPP SECTIONS 22-200 (FOOD STAMPS) AND 22-300 (AFDC)

The Administrative Adjudications Division (AAD) of the California Department of Social Services (CDSS) has implemented the AFDC Intentional Program Violation (IPV) Administrative Disqualification Hearing (ADH) program. Final regulations were adopted effective May 5, 1995. Under this program AAD will conduct ADHs at the request of counties for respondents believed by the counties to have committed IPV's. The purpose of this letter is to provide information regarding the forms to be used by the counties and the state in both AFDC and Food Stamp IPV cases. Copies of all forms are attached for your review and may be reproduced by the counties, as needed. The forms involved in this process are discussed below:

FORM SENT BY COUNTY TO STATE TO REQUEST AN ADHForm DPA 435 (3/95), County Allegation of Intentional Program Violation
(Request for Administrative Disqualification Hearing)

This form is prepared by the county and sent to the state to initiate the hearing process. It is strongly suggested that counties request hearings only for respondents who are currently eligible or whose whereabouts are known in order to avoid efforts that do not result in disqualification because the whereabouts of the respondent are unknown.

The purpose of this form is to request an ADH and to clearly put the respondent on notice of the precise allegations and specific evidence to be used by the county to support its belief that an IPV was committed. A sample of a properly completed DPA 435 is attached for your review.

The information in the box at the top of the form which identifies the county, the specific proposed disqualification period for AFDC and/or Food Stamps, and whether the case is active or closed is very important and must be completed. In addition, the routine case information under the box

should be completed. The section called IPV Allegation must be completed in detail:

Item A must describe the action(s) the person took and/or the occurrence(s) he/she failed to report resulting in an IPV.

Item B should describe why you believe the program violation was intentional. The evidentiary basis for your conclusion must be set forth.

(The county may not satisfy this section by simply concluding, "It is the contention of the county that an IPV was committed at the point at which the respondent did not truthfully provide his/her earnings for the above period.")

Item C should also explain why, in AFDC cases, the county believes the respondent committed the IPV for the purpose of establishing or maintaining the family's eligibility for AFDC or for increasing or preventing a reduction in the amount of the grant.

Item D should describe how and when the person was made aware of his/her responsibility to report the basis of the IPV.

Item E should list, if applicable, the amounts and periods of any resulting AFDC overpayment and Food Stamp overissuance.

The back of the DPA 435, entitled County Evidence & Exhibits, should be completed by providing a description of each item of evidence under the heading Description of Evidence, assigning each document an Exhibit Number, and listing the appropriate page on which that exhibit can be found under Page Number, as shown on the attached example. In the example, if someone wanted to review the respondent's CA 7s, he/she would look for that entry under Description of Evidence and see that the CA 7s are listed as Exhibit 8 and can be found on pages 19-34. This listing enables parties to the hearing to locate specific documents without having to search through the entire file.

Information on this document is to be as precise and straightforward as possible. Exact names of alleged employers and periods of employment are to be given. Allegations of intentional conduct are also to be precise.

STATE'S PROCESSING OF ADH REQUEST

Once the state receives the county's request for an ADH, the state will wait 30 days before scheduling the ADH. The hearing will be scheduled approximately 40 days later, which means that the ADH will be held approximately 70 days after the state initially receives the request from the county. If the county does not notify the state within 30 days that a waiver has been obtained from the respondent, a hearing will be scheduled. The state will then send the respondent

the following forms at the time the case is actually scheduled:

Form DPA 353 (1/95), Notice of Aid to Families with Dependent Children (AFDC) and/or Food Stamp Administrative Disqualification Hearing

This form will notify the respondent of the date, time and location for his/her hearing and the case number that has been assigned. The specific period of disqualification for AFDC and/or Food Stamps that the county is requesting will be shown on this form. The back of the Notice lists the respondent's rights in the hearing process.

Form DPA 479 (6/95), Administrative Disqualification Hearing Waiver - Food Stamps/Aid to Families with Dependent Children (AFDC)

The waiver form states that the county believes that an intentional program violation was committed, resulting in an overpayment of AFDC and/or an overissuance of Food Stamps. It informs the respondent that he/she has a right to an ADH, but that he/she may waive the hearing by signing the waiver. The waiver provides required information to the respondent; the federal and state regulations are very clear as to what information must be included. Respondents will be allowed to return a completed waiver form to the state or county within 20 days after receiving it. They are also advised that they may rescind their signed waiver within the 20-day period. The county must indicate the disqualification penalty that applies to the respondent by marking the appropriate box(es) at the top of page 2 of the waiver form.

Form DPA 435 (3/95), County Allegation of Intentional Program Violation, (Request for Administrative Disqualification Hearing)

A copy of the above document (see information above under FORM SENT BY COUNTY TO STATE TO REQUEST AN ADH) summarizes the charges and the county's evidence is sent to the respondent by the state.

Form DPA 353A (6/95), Administrative Disqualification Hearing Information

This document provides an explanation of each step of the hearing process.

Form DPA 353B (3/84), Regulatory Information on Food Stamp Intentional Program Violation and Administrative Disqualification Hearings

This document contains excerpts from the CDSS Manual of Policies and Procedures (MPP) which contain regulations on Food Stamp IPVs, ADHs and court imposed disqualification. The back of this form contains excerpts from the CDSS MPP, which are regulations on the state hearing process. These procedures are also applicable to ADHs. (These regulations will only be sent in FS-only and FS/AFDC cases, because federal regulations do not require that they be sent in AFDC-only cases.)

Form DPA 353C (2/95), Administrative Disqualification Hearings - General

This document contains CDSS MPP Section 22-200 et. seq. that are applicable to Food Stamp ADHs. (These regulations will only be sent in FS-only and FS/AFDC cases, because federal regulations do not require that they be sent in AFDC-only cases.)

A listing of free legal services.

COUNTY FORMS SENT TO RESPONDENT

If the county wishes to do so, the regulations permit the county to contact the respondent prior to the scheduling of the hearing to either discuss the case with them and/or offer the respondent the opportunity to sign a waiver. If the county avails itself of this option, the following form is applicable to this process:

Form DPA 436 (6/95), County Information Letter

After the county has sent its IPV request (DPA 435) to the state, regulations permit the county to send the respondent this prehearing contact letter. This letter informs the respondent that a request for an ADH has been filed in his/her AFDC and/or Food Stamp case (the county must indicate which by checking the appropriate box in line 2 of the first paragraph of the letter).

This letter informs the respondent that he/she may discuss the ADH process with the county, review the evidence the county has, and decide whether he/she wishes to waive the right to a hearing. If the county wishes to have the respondent call to request a meeting or if they wish to set an appointment for the respondent to come in, the county must check the appropriate box and provide the necessary information for the respondent. The county must provide the information at the bottom of the letter telling the respondent who to contact for free legal advice.

The respondent is informed that if he/she does not respond to this letter within 20 days, a hearing will be scheduled, and he/she will be notified by the state of the date, time and location of the hearing. In some instances where the county has delayed in sending this prehearing letter, the hearing may be scheduled within the 20 days the respondent has to decide whether to sign the waiver. However, once the state is notified that the respondent has signed a waiver, the hearing will not be held.

In order to avoid scheduling problems, the state needs to know as soon as possible when the county has received a waiver from the respondent. The county

should immediately notify the state by telephone or FAX in those cases when the waiver is received. The county should then send a copy of the waiver to:

California Department of Social Services
Operations Support Bureau, IPV Section
744 P Street, M.S. 19-36-A
Sacramento, CA 95814

Telephone: (916) 387-4761
FAX: (916) 387-4758

The county should retain the original waiver.

The county is advised that if the respondent does come for a meeting, fraud investigators are prohibited by regulation from in any way coercing the respondent into signing a waiver for an ADH (see MPP Sections 22-202.443 and 22-320.33).

In addition to the County Information Letter described above, the following forms are also included in the county packet sent to the respondent:

Form DPA 479 (6/95), Administrative Disqualification Hearing Waiver -
Food Stamps/Aid to Families with Dependent Children (AFDC)

Waiver forms (see information above under STATE'S PROCESSING OF ADH REQUEST) are included in the county packet in order to give the respondent the opportunity to waive his/her rights to a hearing.

Form DPA 353A (6/95), Administrative Disqualification Hearing Information

Respondents will also receive a copy of this form, which explains what will happen at each step of the hearing process.

Form DPA 435 (3/95), County Allegation of Intentional Program Violation,
(Request for Administrative Disqualification Hearing)

The county must send respondents a copy of this form, which states the county's allegations and evidence.

The Department will provide training on the administrative disqualification hearing process upon request.

Another All County Letter reducing the monetary limits to "0" in combined Food Stamp and AFDC cases is being prepared.

If you have any questions or require additional information on these forms or the IPV process, please call Laurence H. Geller, Presiding Administrative Law Judge, at (916) 387-4664.

A handwritten signature in black ink that reads "John R. Castello". The signature is fluid and cursive, with a large initial "J" and "C".

JOHN R. CASTELLO
Chief Administrative Law Judge
Administrative Adjudications Division

Attachments

**COUNTY ALLEGATION OF
INTENTIONAL PROGRAM VIOLATION
(Request for an Administrative Disqualification Hearing)**

County: _____

Proposed Disqualification Period

☐ Aid to Families with Dependent Children (AFDC):☐ 6 months ☐ 12 months ☐ Permanent☐ Active ☐ Closed☐ Food Stamps (FS):☐ 6 months ☐ 12 months ☐ Permanent☐ Active ☐ Closed

PERSON	MAILING ADDRESS
CASE NO.	
SSN	PHONE

IPV Allegation:

A. Describe the action(s) the person took and/or the occurrence(s) he/she failed to report which resulted in an Intentional Program Violation (IPV) as defined in regulation MPP §§22-300(1) and 22-351(i).

B. Describe why you believe the person's action and/or failure to report the occurrence was intentional (on purpose).

C. In AFDC cases, also explain why the county believes the respondent committed the IPV (e.g., for the purpose of establishing or maintaining the family's eligibility for AFDC or for increasing or preventing a reduction in the amount of the grant).

D. Describe how and when the person was made aware of his/her responsibility to report the basis of the IPV.

E. Describe the exact period of time in which the action and/or occurrence took place and the amounts and periods of any resulting AFDC overpayments and FS overissuances.

(Please type information on form, use additional paper if necessary)

**COUNTY
EVIDENCE AND EXHIBITS**

[illegible]

I certify that the above information is true and correct and establishes the basis of an Intentional Program Violation and that the county is not pursuing criminal prosecution of the AFDC and/or FS case at this time.

By _____ Title _____ Date _____

Reviewed by: Name _____ Title _____

Appeals/Hearing Coordinator _____ Phone _____

Mail to: California Department of Social Services
Administrative Adjudications Division
744 P Street, MS 19-36 A
Sacramento, California 95814

COUNTY ALLEGATION OF INTENTIONAL PROGRAM VIOLATION (Request for an Administrative Disqualification Hearing)

County: Somewhere

Proposed Disqualification Period

☒ Aid to Families with Dependent Children (AFDC):

☒ 6 months ☐ 12 months ☐ Permanent

☒ Active ☐ Closed

☒ Food Stamps (FS):

☒ 6 months ☐ 12 months ☐ Permanent

☒ Active ☐ Closed

PERSON	Jane Doe	MAILING ADDRESS	123 4th Street
CASE NO.	95123456		Somewhere, California 00000
SSN	123-45-6789	PHONE	(123) 456-7890

IPV Allegation:

- A. Describe the action(s) the person took and/or the occurrence(s) he/she failed to report which resulted in an Intentional Program Violation (IPV) as defined in regulation MPP § 22-300(1) and 22-351(i).

The respondent did not report any earnings from SY Foundation for the period 2/93 through 6/93. The county has verified that she was hired at SY Foundation on 1/15/93. The respondent did not report this on her 1/93 CA7. The claimant had previously been working at the SY Foundation under college work study.

- B. Describe why you believe the person's action and/or failure to report the occurrence was intentional (on purpose).

On the respondent's 1/93 CA7 in question #5 the claimant marked "No" to the question regarding starting a job. The income verification received indicated that the respondent had been hired as a regular employee on 1/15/93.

Please see attachment for more information.

- C. In AFDC cases, also explain why the county believes the respondent committed the IPV (e.g., for the purpose of establishing or maintaining the family's eligibility for AFDC or for increasing or preventing a reduction in the amount of the grant).

County contends respondent knew that the reported income would have resulted in a reduction of aid. Respondent had reported earned income in the past, which resulted in reductions in aid.

Please see attachment for more information.

- D. Describe how and when the person was made aware of his/her responsibility to report the basis of the IPV.

The respondent was made aware of reporting responsibilities when she signed the AFDC 28 and SAWS 2A on 3/25/92. The SAWS 2A signed 3/25/92 also advised the claimant of Food Stamp IPV penalties.

Please see attachment for more information.

- E. Describe the exact period of time in which the action and/or occurrence took place and the amounts and periods of any resulting AFDC overpayments and FS overissuances.

The respondent failed to report when she began regular employment with SY Foundation. The respondent did not report any earnings from this employment during the months of 2/93, 3/93, 4/93, 5/93, and 6/93.

Please see attachment for more information.

(Please type information on form, use additional paper if necessary)

COUNTY EVIDENCE AND EXHIBITS

EXHIBIT NO.	DESCRIPTION OF EVIDENCE	PAGE NO.
1.	IFD440, IEVS Integrated Fraud Detection System for period 1/93 through 3/93 and 4/93	1-2
2.	SID20, Employment Earnings Verification, from SY Foundation	3
3.	JA2, dated 3/25/92	4-9
4.	SAWS 2A, dated 3/25/92	10-12
5.	AFDC 28s, dated 3/25/92 and 4/9/92	13
6.	DFA 285A2, dated 4/1/93	14-17
7.	AFDC 28, dated 4/14/93	18
8.	CA7s for 2/92, 3/92, 4/92, 8/92, 10/92, 11/92, 12/92, 1/93, 2/93, 3/93, 4/93, 5/93, and 6/93 .	19-34
9.	Income Charting - Reported v. Received	35
10.	FIS 78 and NA 274C, Notices of Action, dated 10/27/94	36-37
11.	DFA 377.7B, Food Stamp Repayment Notice, dated 10/27/94	38
12.	DFA 285, Food Stamp Claim Determination Worksheet, Dated 10/6/94	39
13.	SJ 89, Overpayment/Overissuance Summary	40
14.	279Ls, List of Authorizations to Start, Stop or Change AFDC and Food Stamps.	41-44
15.	_____ County Update 92-55	45-48

I certify that the above information is true and correct and establishes the basis of an Intentional Program Violation and that the county is not pursuing criminal prosecution of the AFDC and/or FS case at this time.

By _____ Title _____ Date _____

Reviewed by: Name _____ Title _____

Appeals/Hearing Coordinator _____ Phone _____

Mail to: California Department of Social Services
Administrative Adjudications Division
744 P Street, MS 19-36 A
Sacramento, California 95814

SAMPLE

ATTACHMENT

- B. On the 2/93 CA7 the respondent reported only one check being received from the SY Foundation. This check was the college work study check for the period 1/1/93 through 1/31/93. The respondent did not report 2 additional checks she received from the SY Foundation as regular earnings for 2/93. On the 3/93, 4/93, 5/93, and 6/93 CA7(s) the respondent answered "No" to question #1 which asks if anyone received money from a job. The respondent wrote on the back of her 3/93 CA7 "The end of school grant - they ran out of money".

The respondent signed a DFA 285A2 on 4/1/93 on which she marked "No" to question #9 which asks if anyone is working.

- C. She reported such income in February through May, 1992, and her grants were reduced in April through July because of the income. In addition, all of the CA 7s filed by the respondent inform her that the information reported may result in a decrease or discontinuance of benefits. Also, the certification on the AFDC 28 dated April 9, 1992 informed her that the information is necessary to determine the correct amount of the grant.

- D. The respondent was sent an informing notice with her 3/92 Medi-Cal card informing her of AFDC IPV penalties. A second informing notice was sent to the respondent with her 5/92 CA7.

All the CA7s completed during the period of non-report included information on penalties for failure to report in AFDC and Food Stamps.

The respondent demonstrated that she understood her reporting responsibilities:

8/92	CA7	Reported that she started receiving money from the job study program
10/92	CA7	Reported money received from Work Study and School Grant
11/92	CA7	Reported College Work Study
12/92	CA7	Reported College Work Study and School Grant
1/93	CA7	Reported College Work Study
3/93	CA7	Reported the end of her school grant
6/93	CA7	Reported she started working on 6/19/93. This was a new employer - WH Convalescent Hospital

- E. The respondent incurred an overpayment of \$3,678 for the period 4/93 through 8/93. The respondent incurred an overissuance of \$738 for the period 4/93 through 8/93.

NOTICE OF AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC) AND/OR FOOD STAMP (FS) ADMINISTRATIVE DISQUALIFICATION HEARING

	CASE NUMBER
--	-------------

_____ County has requested that an Administrative Disqualification Hearing (ADH) for an Intentional Program Violation (IPV) be held on your ☐ AFDC and/or ☐ FS case. Accordingly, the California Department of Social Services (CDSS) has scheduled a hearing as follows:

LOCATION	DATE	TIME
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Attached to this form you will find a copy of the reasons why the county believes you committed an IPV and a summary of the evidence in support of those charges. You may contact the person named on the attachment to schedule an appointment to examine the documentary evidence.

If you do not attend the hearing, the State's decision will be based solely on the evidence presented by the county, and could result in your being disqualified from receiving AFDC and/or FS as follows:

AFDC	FS
<input type="checkbox"/> Six months for the first violation	<input type="checkbox"/> Six months for the first violation
<input type="checkbox"/> Twelve months for the second violation	<input type="checkbox"/> Twelve months for the second violation
<input type="checkbox"/> Permanently for the third violation	<input type="checkbox"/> Permanently for the third violation

You should know that the results of this hearing will not prevent the county, State or Federal governments from prosecuting you in a civil or criminal court action, or from collecting any overpayments of AFDC benefits and/or overissuances of FS benefits related to the alleged IPV.

The regulatory authority which allows an ADH is Division 22, Sections 22-200 and 22-300 of the CDSS Manual of Policies and Procedures.

Attachments

Attached you will find:

1. The county's request for an ADH (AFDC and/or FS), which summarizes the charges and county's evidence.
2. DPA 353A, an explanation of the ADH process which describes how the hearing will be conducted and what you can expect to happen during the hearing.
3. DPA 353B, containing sections of the CDSS Manual of Policies and Procedures which explain general State Hearings processes, procedures and rights.
4. DPA 353C, CDSS Manual of Policies and Procedures §22-200 et. seq. that are applicable to an IPV in the FS Program.
5. Waiver form.
6. Listing of free legal services.

PLEASE SEE THE BACK OF THIS FORM FOR A SUMMARY OF YOUR RIGHTS

Distribution: 1 - Claimant 2 - State 3 - County 4 - Authorized Representative

YOUR RIGHTS

You have the right to:

1. Examine parties and witnesses.
2. Conduct cross-examination as may be required for a full disclosure of the facts.
3. Introduce information, such as documents, letters, etc.
4. Bring witnesses.
5. Examine all documents prior to and during the hearing. If you wish to examine the evidence used by the county before the hearing, please contact the county office.
6. Question opposing witnesses and parties on any matter relevant to the issues even though the matter was not covered in the direct examination.
7. Make oral or written argument.
8. Challenge the evidence presented against you.
9. You have the right to remain silent concerning the charge(s), and anything said or signed by you concerning the charge(s) may be used against you in a court of law.
10. Call the county to get the name and phone number (if available) of someone who can give free legal advice. If free legal advice is not available, the county shall provide when called, the phone number of a lawyer referral service of the local bar association. The county person's phone number is located on the attachment relating to charges and summary of evidence, or see attached listing of individuals or organizations that provide free legal services to persons alleged to have committed IPV's.
11. Call Public Inquiry and Response at 800-952-5253 (toll free number) to receive further information about these rights from a person who speaks your language or to request an interpreter for your hearing if you have trouble understanding English. If you are hearing impaired, you may call the Public Inquiry and Response TDD Number: 800-952-8349.
12. Call a Departmental Calendar person at 800-743-8525 (toll free number) to have the hearing conducted in your home if because of some physical disability you are unable to travel to the location referred to on the reverse side.
13. Call a Departmental Calendar person at 800-743-8525 (toll free number) to request that the hearing be postponed. This request must be made at least ten (10) days in advance of the scheduled hearing.

In the AFDC Program, you are entitled to only one postponement, which can be for up to 30 days.

In the FS Program, you are entitled to one postponement and you may receive additional postponements for good cause. The total period for all postponements shall not exceed 30 days.

14. In both the AFDC and FS Programs, if you do not appear at the hearing, you have ten (10) days from the date of the scheduled hearing to present to CDSS at the state level, or county welfare department in the case of a local level hearing, good cause for failure to appear in order to receive a new hearing.
15. You may waive your right to appear at an ADH. You have 20 days from the date of the notice to submit the signed waiver. If you do not sign and return the waiver within that time period, the ADH will be scheduled. If you sign the waiver and change your mind within the 20-day period, notify the Administrative Adjudications Division and an ADH will be scheduled.
16. INFORMATION PRACTICES - This hearing is being conducted and relevant information is being collected under the authority of Chapter 22-200 of the Manual of Policies and Procedures. A case file will be established by the Administrative Adjudications Division. You have the right to examine the materials that constitute the record for decision. Any information provided may be shared by the Administrative Adjudications Division with the county welfare department, the state court system, the U.S. Department of Agriculture, and Health, Education and Welfare.

**ADMINISTRATIVE DISQUALIFICATION
HEARING WAIVER - AID TO FAMILIES WITH
DEPENDENT CHILDREN (AFDC)/FOOD STAMPS (FS)**

IMPORTANT NOTICE

Read carefully. Signing this waiver may affect your rights.

Date:
Case Name:
Case Number:

_____ County believes that you, _____, committed an Intentional Program Violation (IPV). This means that you **intentionally** gave the county wrong information or you **intentionally** did not tell the truth when you were asked certain questions. **By "intentionally" we mean that you did it on purpose.** For AFDC, **this means you also did it for the purpose of establishing or maintaining the family's eligibility for AFDC or for increasing or preventing a reduction in the amount of the grant.** This resulted in an overpayment of \$ _____ in AFDC and/or an overissuance of \$ _____ in FS. The county may seek a disqualification penalty even if there is no overpayment or overissuance. Disqualification penalties for an IPV are six months for the first violation, 12 months for the second violation or permanently for the third violation.

You have the right to an Administrative Disqualification Hearing (ADH). However, you may give up your right to a scheduled hearing by signing the ADH Waiver form on the back of this notice. You do not have to admit that you committed an IPV. If you sign the waiver, you will be disqualified from AFDC and/or FS for the time period(s) indicated on the back of this form.

If you sign this waiver to give up your rights to the ADH hearing, you should know:

- Your income and resources will still be counted when figuring the household's eligibility and benefits even though you have been disqualified.
- If there are other members in your household, your household's AFDC and/or FS may be lowered or stopped during your disqualification period.
- You have the right to remain silent concerning the charge(s); however, anything you say or sign may be used against you in a court of law.
- Signing this statement does not stop the state or federal government from prosecuting you for an IPV in a court of law or from collecting any overpayments or overissuances.
- For FS only, if you had earned income that you intentionally did not report, the amount you owe will be more because you will not be allowed the earned income deduction.

If you decide **NOT to sign** this waiver of rights to the ADH hearing:

- Your current eligibility will not change pending this hearing.
- When the hearing is scheduled, you do not have to attend*. The hearing will still take place and a decision will be prepared based on the evidence presented.

* If the county is sending you this form before your hearing has been scheduled, you will receive the date, time, and place in another notice from the State.

This means you will not get AFDC and/or FS for a period of time. **If you sign this waiver, your disqualification penalty will be:**

- | AFDC | FS |
|--|--|
| <input type="checkbox"/> 6 months (first violation) | <input type="checkbox"/> 6 months (first violation) |
| <input type="checkbox"/> 12 months (second violation) | <input type="checkbox"/> 12 months (second violation) |
| <input type="checkbox"/> permanently (third violation) | <input type="checkbox"/> permanently (third violation) |

FOOD STAMP NOTICE TO OTHER HOUSEHOLD MEMBERS

You and the other adults in the household will be held responsible for paying back the extra Food Stamps given to your household (even if you or the disqualified individual move out), unless the amount of extra Food Stamps has already been paid back.

ADMINISTRATIVE DISQUALIFICATION HEARING WAIVER

IF YOU WANT TO WAIVE YOUR RIGHT TO THE HEARING, sign and return this waiver to the California Department of Social Services within 20 days from the date of the attached Notice of Hearing. If the person being accused is not the head of household, then the head of household must also sign.

If you sign this waiver, you will be disqualified from the AFDC and/or FS program for the period(s) indicated above, and your household's payment may be stopped, even if you do not admit to the facts as presented by the county.

I understand and acknowledge that:

1. The county alleges that I have committed an Intentional Program Violation.
2. I have reviewed the attached copy of the county's request for a hearing and the list of evidence the county has to support the request. If I wish to see the evidence or discuss this process, I can contact the Investigator in person or by telephone.
3. I hereby voluntarily waive my right to an AFDC and/or FS Administrative Disqualification Hearing.
4. I understand that if I sign this waiver, I may change my mind and request an ADH by notifying the Administrative Adjudications Division at (916) 387-4760 within the 20-day period for returning the waiver, as explained above.

Please check one of the boxes below:

- ☐ I do not admit that the facts as presented by the county are correct. However, I have chosen to sign this waiver and understand that a disqualification penalty may result.
- ☐ I do admit to the facts as presented by the county and understand that a disqualification penalty may result if I sign this waiver.

DO NOT SIGN THIS IF YOU DO NOT KNOW WHAT IT MEANS!

SIGNATURE OF ACCUSED PERSON	DATE
SIGNATURE OF HEAD OF HOUSEHOLD (if the accused person is not the head of household)	DATE

After signing this Waiver, return it in the enclosed envelope.

If you have any questions or need more information about the ADH or this waiver request, you may call the county representative at: _____.

If you wish to review the state's published hearing procedures (to have a copy sent to you), call () _____.

ADMINISTRATIVE DISQUALIFICATION HEARING INFORMATION

An Administrative Disqualification Hearing for an Intentional Program Violation (IPV) is an informal proceeding between you, an impartial Administrative Law Judge (ALJ) assigned by the California Department of Social Services (CDSS) and a representative of the county. It is not a court hearing. You have the right to have an attorney or other representative present with you at the hearing.

An Administrative Disqualification Hearing has been requested by the county welfare department. The law requires that the county's allegation(s) of an IPV be reviewed by an ALJ through the administrative hearing procedure to determine if the county's allegation is correct. The ALJ will review the charges and evidence of IPV submitted by the county. He/She will also consider any evidence and arguments you may have. If the ALJ decides that disqualification is appropriate, the county can then disqualify the member of the AFDC assistance unit (AU)/FS household who committed an IPV. Only the AU/household member who has committed an IPV will be disqualified. Other AU/household members will remain eligible, but the benefit level may be lowered or stopped depending upon case circumstances.

Time and Place of Hearing

The enclosed notice indicates the exact date, time and place of your hearing. **If the county is sending you this form before your hearing has been scheduled, you will receive the date, time, and place in another notice from the state.**

Before the Hearing

You may present your case or authorize someone who knows your circumstances to appear for you or with you at the hearing. If you plan to have someone appear for you or with you, send the name, address and telephone number of your representative to the Administrative Adjudications Division.

You have a right to look at your case record and the regulations. You are also allowed to have a copy of the county's position statement before your hearing. You may pick up the statement any time during business hours in the two working days before your date of hearing. Also, you may prepare a written statement of your position to present to the ALJ at your hearing.

If you want to have at your hearing a person or papers important and relevant to your case, you may request that a subpoena be issued. To request a subpoena, write or call the Administrative Adjudications Division office closest to you. State the name of the person you want subpoenaed or describe the documents you want subpoenaed, and tell why they are important to your hearing.

744 P Street, MS 19-36 A Sacramento, CA 95814	(toll free) Phone: (800) 743-8525	107 South Broadway, Room 6005 Los Angeles, CA 90012	Phone: (213) 897-3983
1390 Market Street, Suite 1101 San Francisco, CA 94102	Phone: (415) 557-0526	355 West Grand Avenue, #4 Escondido, CA 92025	Phone: (619) 735-5070

You have the right to obtain a copy of the state's published hearing procedures. If they are not attached, you can obtain a copy by contacting the Administrative Adjudications Division office closest to you.

If you wish to automatically postpone the hearing, the request must be made at least ten (10) days in advance of the scheduled hearing. If you request a postponement within ten (10) days of the hearing, a postponement will be granted only if you have a good reason for not attending the hearing. In either case, send a written request to the Administrative Adjudications Division, 744 P Street, MS 19-36 A, Sacramento, CA 95814, or call (800) 743-8525 (toll free).

Please notify the Administrative Adjudications Division before your hearing that you need language services so an interpreter will be present at your hearing to assist you and the other participants. You can do this by writing to the Administrative Adjudications Division, 744 P Street, MS 19-36 A, Sacramento, CA 95814, or calling (800) 743-8525 (toll free).

At the Hearing

You have an opportunity to tell the ALJ why you do not believe an IPV occurred and the county representative will have an opportunity to explain why the county believes that an IPV did occur. You and the county representative may question each other and any witnesses who are present. The ALJ may also ask questions to bring out all the facts.

A permanent record of all that is said at the hearing will be made on a tape recorder. The recording is for use in making the decision and is kept in case there is a dispute about the decision. Usually the recording is destroyed four (4) years after the final decision is made.

You are not required to attend the Administrative Disqualification Hearing. But if you do not appear, the decision will be based entirely on evidence presented by the county. If you do not appear, yet still wish a hearing, you must request that your hearing be rescheduled and show a good reason for not appearing. Please write or call the **Sacramento** Administrative Adjudications Division office within ten (10) days from the date of the scheduled hearing.

The Decision

After the hearing is completed, the ALJ will prepare a written decision. This is subject to the review of the Director of CDSS. The Director has the authority to reject the ALJ's decision and issue his/her own decision or to order a further hearing. If the Director issues his/her own decision, that decision is binding, but you will receive a copy of each.

County Action Based on Decision

If the decision finds that an IPV did occur, the county welfare department will send you a notice stating when the disqualification period will begin and the amount of the aid payment to which your AU/household is entitled. If the decision finds that an IPV did not occur, the county will not take disqualification action.

Appeal

If you are dissatisfied with the decision which finds that an IPV occurred and disqualification is appropriate, you have the right to file a petition with the Superior Court to seek judicial review. The petition must be filed within one (1) year after you receive the decision.

Waiver

You have 20 days from the date of this notice to sign and submit the enclosed waiver form to CDSS if you do not wish to have a hearing. If you do not return the signed waiver, the hearing will be scheduled. If you are not the head of your household, the caretaker relative (AFDC) or the head of household (FS) must also sign the waiver.

If you waive your right to a hearing, you will be disqualified for the appropriate period of time and your AU's/household's payment will be reduced whether or not you admit to the facts as presented by the county.

Warning

You have the right to remain silent concerning the charges against you. Anything said or signed by you may be used against you in a court of law.

REGULATORY INFORMATION ON FOOD STAMP INTENTIONAL PROGRAM VIOLATION AND ADMINISTRATIVE DISQUALIFICATION HEARINGS

The following are excerpts from the Department of Social Services Manual of Policies and Procedures which contain regulations on Food Stamp Intentional Program Violation, Administrative Disqualification Hearings and court imposed disqualification.

DISQUALIFICATION

- 1 **Intentional Program Violation disqualification penalties.** Individuals found to have committed an intentional program violation through an administrative disqualification hearing or by a court of law shall be ineligible to participate in the Program.
- 2 **Definition of Intentional Program Violation.** For purposes of determining at an administrative hearing whether or not an intentional program violation was committed, an act of committing an intentional program violation is defined as having intentionally:
 - (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts or;
 - (2) Committed any act which constitutes a violation of the Food Stamp Act, the Food Stamp Program regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt or possession of Food Stamp coupons or A.T.P.'s.
- 3 **Notification to applicant households.** The county welfare department shall inform the household in writing of the disqualification penalties for committing an intentional program violation each time it applies for program benefits. The penalties shall be written in clear, prominent, and bold face lettering on the application form.
- 4 **Administrative disqualification.** A request for an administrative disqualification hearing shall be submitted to the OCR, DSS by the county whenever the county has documented evidence to substantiate that a currently certified household member has committed one or more acts of intentional program violation as defined in this section and the county believes the household member should be disqualified. Administrative disqualification hearings shall be conducted by the DSS in accordance with the provisions of Division 22. The burden of proving intentional program violation is on the county.
 - 41 Disqualifications relating to the transfer of resources shall be handled in accordance with 63-501.6, unless intentional program violation can be established as defined in 20-300.
- 5 **Participation while awaiting a hearing.** A pending disqualification hearing shall not affect the individual's or the household's right to be certified and participate in the program. Since the county cannot disqualify a household member for intentional program violation until the hearing official finds that the individual has committed intentional program violation, the county shall determine the eligibility and benefit level of the household in the same manner it would be determined for any other household. For example, if the action for which the household member is suspected of intentional program violation does not affect the household's current circumstances, the household would continue to receive its allotment based on the latest certification action or be recertified based on a new application and its current circumstances. However, the household's benefits shall be terminated if the certification period has expired and the household, after receiving its Notice of Expiration fails to reapply. The county shall also reduce or terminate the household's benefits if it has documentation which substantiates that the household is ineligible or eligible for fewer benefits (even if these facts led to the suspicion of intentional program violation and the resulting disqualification hearing) and the household fails to request a state hearing and continuation of benefits pending the hearing. For example, the county may have facts which substantiate that a household failed to report a change in its circumstances even though the county has not yet demonstrated that the failure to report involved an act of intentional program violation.
- 6 **Notification of disqualification action.** If the administrative disqualification hearing finds that the household member committed intentional program violation, the county shall mail a written notice to the household member prior to disqualification. The notice shall inform the household member of the date disqualification will take effect. The notice shall also advise the remaining household members, if any, of either the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. In addition, the remaining household members shall be informed that if they are not satisfied with the county's determination of their benefits during the disqualification period, they may request a state hearing. The procedures for handling the income and resources of the disqualified member are described in 63-503.54.
- 7 **Court imposed disqualifications.**

A court of appropriate jurisdiction, with either the state, county, or the United States as prosecutor or plaintiff, may order an individual disqualified from participation in the program.

Counties shall disqualify an individual found guilty of intentional program violation by the courts only if the court orders disqualification. If disqualification is ordered but a date for initiating the disqualification period is not specified, the county shall initiate the disqualification period within 45 days of the date the disqualification was ordered.
- 8 **Reversed disqualifications.** In cases where the determination of intentional program violation is reversed by a court of appropriate jurisdiction, the county shall reinstate the individual in the Program if the household is eligible. The county shall restore any benefits that were lost as a result of the disqualification in accordance with the procedures specified in 63-802.

The following are excerpts from the Department of Social Services Manual of Policies and Procedures which are regulations on the state hearing process. These procedures are also applicable to Administrative Fraud Hearings.

22-010 AUTHORIZED REPRESENTATIVE

22-010

- 1 The claimant may authorize a representative to represent him/her at the hearing by signing a written statement to that effect or by stating at the hearing that the person is so authorized. The authorization may be limited in scope or duration by the claimant, and may be revoked at any time.
- 2 If the claimant has not authorized the representative in writing and is not present at the hearing, the person may be recognized as the authorized representative if, at the hearing, the person swears or affirms under penalty of perjury that the claimant has so authorized him/her to act as the claimant's authorized representative, and the hearing officer further determines the person is so authorized. The hearing officer may make the determination by contacting a collateral source (i.e., the claimant). In all such cases a written authorization must be submitted after the hearing.
- 3 Whenever the claimant is represented by an authorized representative, the authorized representative shall be furnished a copy of all notices and decisions concerning the state hearing which are provided to the claimant.
- 4 After a person or organization has been authorized to represent the claimant, the county, after notification of the authorization, shall simultaneously send copies to the authorized representative of any subsequent correspondence that it has with the claimant regarding the state hearing.

22-023 COUNTY WELFARE AGENCY RESPONSIBILITY PRIOR TO THE STATE HEARING

22-023

- 12 Each case for which a state hearing request has been filed shall be assigned to a county representative who shall assume the major responsibility for preparing the case in accordance with the requirements of this Division and/or presenting it at the hearing. The county representative shall not have had immediate prior involvement with the case.
- 2 Preparation for the State Hearing
 - Prior to the hearing, the county representative shall:
 - 21 Determine the issues raised by the hearing request. If the request for hearing does not clearly set forth the claimant's basis for appeal, the county representative shall immediately contact the claimant for clarification.
 - 22 After determining the issues, the county representative shall review the applicable statutes, regulations and policies in light of the evidence which exists in the case record. In conducting this initial review, the representative shall contact the eligibility worker and other county personnel as appropriate. When assistance of the State Department of Social Services or the State Department of Health Services is required to clarify any questions, such assistance shall be sought without delay.
 - 23 After conducting the initial review, the county representative shall make a determination concerning the appropriateness of the county action.
 - 231 If the county representative concludes that the county action was incorrect, the county representative shall contact the claimant and attempt to resolve the case without a hearing. The county representative shall have the authority to make such a decision. The conditional withdrawal procedure described in Section 22-054 is usually appropriate in such instances.
 - 232 If the county representative determines that the county action was correct, the county representative shall contact the claimant and:
 - a. Inquire if the claimant plans to attend the hearing;
 - b. Determine if there are any further contentions which the claimant will attempt to raise at the hearing; and
 - c. Provide any and all information which can be of assistance to the claimant in preparing for the hearing. This shall include revealing to the claimant any and all evidence which might be favorable to the claimant's case. The county representative may explain to the claimant the right to withdraw the request for hearing; however, a request for such a withdrawal is prohibited.
 - 24 The county representative shall determine if an interpreter will be necessary at the hearing or if a home hearing will be necessary. The county representative shall notify the Office of the Chief Referee if the claimant has requested an interpreter or home hearing. The county representative shall also report without delay to the Chief Referee any changes in the claimant's address or any other circumstances which might affect the necessity for or conduct of the hearing. This responsibility to report changes in the claimant's circumstances continues after the hearing until a decision is rendered.
 - 25 Prior to each hearing, the county representative shall prepare a typewritten position statement. The position statement shall summarize the facts of the case and set forth the regulatory justification for the county's action. If the issue concerns the amount of aid, grant adjustment, or a demand for repayment, the county representative must include in the position statement a complete final budget computation, month by month, for the period in issue. The county shall include as attachments to the position statement copies of documentary evidence and a list of witnesses which the county intends to use during the hearing. The documents shall be itemized on the last page of the position statement and attached as exhibits.
 - 26 While preparing for the hearing, the county representative shall determine if the presence of the eligibility worker or other county witnesses would be helpful for the resolution of the issue.
 - 27 At the hearing, the county representative shall assume full responsibility for presentation of the county's case. Such presentation shall include:
 - 271 Summarizing the written position statement;
 - 272 Presenting the testimony of county witnesses;
 - 273 Cross-examining the testimony of the claimant and the claimant's witnesses;
 - 274 Responding to any questions from the claimant or hearing officer concerning the case; and
 - 275 Having the county case record available at the hearing. The county representative shall have authority at the hearing to make binding agreements and stipulations on behalf of the county welfare department.

1 If the hearing is held in a county other than the responsible county, the welfare department of the responsible county may elect any of the following procedures:

- 11 Send a county representative, with the case record, to the hearing; or
- 12 The county of responsibility may submit a written statement summarizing its action. Said summary shall include all of the information in the county's possession regarding the point or points at issue, both supporting and opposing its action, together with any relevant dates and any arguments the county desires to make. The county shall attach all pertinent documents to the summary statement. The summary statement shall be signed under penalty of perjury and contain a waiver of procedural defects of proceeding with the hearing in the absence of the county representative. The summary statement and pertinent documents, shall be mailed at least five days prior to the hearing to the claimant, the authorized representative, and to the place of the hearing with instructions that the statement and attachments be presented to the hearing officer at the time of the hearing.
- 13 Send the case record, or a certified copy thereof, containing all relevant information in the county welfare department's possession, to the welfare department of the county in which the claimant is living, with the request that the county represent the responsible county at the hearing. The responsible county shall declare under penalty of perjury that the record submitted is the case record of the claimant. If certified copies of the record are sent instead of the original, the responsible county shall declare under penalty of perjury that the copies are true copies of the original records. The request should be made in sufficient time to allow the county in which the claimant is living to arrange for representation or to notify the responsible county of its inability to provide such representation. The responsible county welfare department would then, necessarily, follow one of the other two procedures.

22-045 SETTING THE HEARING

22-045

1 Place of Hearing

The state hearing shall be held in the county in which the claimant is living at the time of the hearing. If the claimant is unable to attend the hearing at the hearing location for reasons of poor health, the hearing shall be held in the claimant's home or in another place agreed to by the county and the claimant.

2 The hearing shall be conducted at a reasonable time, date, and place.

3 Notification

The Office of the Chief Referee shall mail or deliver to the claimant and the county a written notice of the time and place of the hearing not less than ten days prior to the hearing.

22-049 THE HEARING - GENERAL RULES AND PROCEDURES

22-049

1 Attendance at the hearing shall be limited to those directly concerned. The hearing officer shall exclude unauthorized persons from the hearing unless the claimant agrees to their presence and the hearing officer determines that their presence will not be adverse to the hearing. Appearance by the claimant (in person or by the authorized representative) is required at the hearing, unless the hearing is a rehearing. The hearing officer may exclude a witness during the testimony of other witnesses; however, both the county and the claimant have the right to have a representative present throughout the hearing. The hearing officer shall have the authority to exclude persons who are disruptive of the hearing.

2 The hearing shall be conducted in an impartial manner. All testimony shall be submitted under oath, affirmation, or penalty of perjury.

3 The proceedings at the hearing shall be reported by tape recorder or otherwise perpetuated by mechanical, electronic, or other means capable of reproduction or transcription.

4 The issues at the hearing shall be limited to those issues which are reasonably related to the request for hearing or other issues identified by either the county or claimant which they have jointly agreed, prior to the or at the state hearing, to discuss.

41 Notice of an Issue

If the claimant contends that he or she did not receive adequate notice required by Section 22-021.1, this issue must be resolved by the hearing officer at the hearing.

411 If the hearing officer determines that adequate notice was provided, the claimant must agree to discuss the substantive issue or issues or the case will be dismissed.

412 If the hearing officer determines that adequate notice was not provided, the case will be postponed unless the claimant waives the adequate notice requirement and agrees to discuss the substantive issue or issues at the hearing. If the notice was not adequate and involved termination or reduction of aid (other than those referred to in Section 22-022.11), aid shall be reinstated retroactively and the provisions of Section 22-022.5 shall apply.

5 An interpreter shall be provided by the state if, prior to the hearing, a party requests an interpreter or if at the hearing, the hearing officer determines that an interpreter is necessary.

6 When the state hearing is to be held with the assistance of an interpreter, the hearing officer shall determine if the interpreter has been certified by the Department of Social Services. If the interpreter has been certified, the qualifications and competency of the interpreter need not be further examined. If the interpreter has not been certified, the hearing officer shall examine the qualifications and competency of the interpreter. A separate oath or affirmation to translate accurately shall be administered to all interpreters.

7 The rights of the claimant and the county shall include: The right to examine parties and witnesses; the right to conduct such cross-examination as may be required for a full disclosure of the facts; the right to introduce exhibits; the right to examine all documents prior to and during the hearing; the right to question opposing witnesses and parties on any matter relevant to the issues even though that matter was not covered in the direct examination; the right to make oral or written argument; and the right to rebut the evidence.

8 Communications Concerning the Hearing

81 All documents submitted by either the claimant or the county must be made available to both parties. Copies of all such documents must be provided to the claimant free of charge.

82 Merits of a pending state hearing shall not be discussed between the hearing officer and a party outside the presence of the other party.

22-050 EVIDENCE

22-050

1 The Introduction of Evidence

The taking of evidence in a hearing shall be conducted by the hearing officer in a manner best suited to ascertain the facts and to control the conduct of the hearing. Prior to taking evidence, the hearing officer shall explain to the extent possible the issues and shall state the order in which evidence shall be reviewed.

2 The Admissibility of Evidence

Except as provided below, evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. The rules of evidence as applicable in judicial proceedings are not applicable in state hearings.

.21 The hearing officer may exclude evidence which is irrelevant, cumulative or unduly repetitious.

.22 The hearing officer shall exclude evidence which is privileged under the Evidence Code if the privilege is claimed in accordance with law.

3 Weight of Evidence

Although evidence may be admissible under Section 22-050.2, the hearing officer will consider the nature of the evidence in assessing its probative value.

4 Official Notice

.41 "Official Notice" describes the manner in which a hearing officer or the Director will recognize the existence and truth of certain facts which have a bearing on the issue in the case, without requiring the actual production of evidence to prove such facts.

.42 The hearing officer or Director shall take official notice of those matters which must be judicially noticed by a court under Section 451 of the Evidence Code. Generally, this section provides that judicial notice must be taken of laws, statutes, regulations, official records, and facts and propositions which are of such universal knowledge that they are not reasonably subject to dispute. The hearing officer may take official notice of those matters set forth in Section 452 of the Evidence Code. Generally, this section provides that official notice may be taken of facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

.43 The hearing officer may take official notice of any generally accepted technical fact relating to the administration of public social service.

22-051 THE EXAMINATION OF RECORDS AND ISSUANCE OF SUBPOENAS

22-051

1 Examination of Records

.11 Upon request, the county welfare department shall allow the claimant to examine the case record during regular working hours (see Section 48-013). If portions of the case record are privileged under the provisions of Section 48-013, the claimant shall be entitled to inspect such material only if the claimant is the holder of the privilege.

.12 The claimant shall have the right prior to the hearing, as well as during the hearing, to examine nonprivileged information which the county has used in making its decision to take the action which is being appealed.

.13 The county welfare department shall reproduce without charge or at a charge related to the cost of reproduction, the specific policy materials necessary for an applicant or recipient, or his or her authorized representative, to determine whether a state hearing should be requested or to prepare for a state hearing. In the Food Stamp Program such material must be made available to the household or its authorized representative at no charge.

2 Issuance of Subpoenas

.21 Before the hearing has commenced, the Chief Referee, or his designee, upon the written or oral request of the claimant or the county welfare department, shall issue a subpoena requiring the presence of any witness whose expected testimony has been shown to be relevant, and not cumulative or unduly repetitious.

.22 Before the hearing has commenced, the Chief Referee, or a designee, upon the written or oral request of the claimant or the county welfare department, shall issue a subpoena duces tecum for the production by a witness of books, papers, correspondence, memoranda, or other records. The person who requests the subpoena duces tecum shall submit a statement under penalty of perjury describing the materials desired to be produced and their relevancy. A witness may comply with the subpoena duces tecum by providing certified copies of the material requested.

.23 After the hearing has commenced, the hearing officer assigned to the case may issue a subpoena or subpoena duces tecum as necessary.

.3 The party requesting the subpoena or subpoena duces tecum shall have the responsibility of serving it.

22-052 WITNESS FEES AND MILEAGE

22-052

.1 A witness who is subpoenaed at the request of the claimant and who appears at the hearing may demand payment for witness fees and mileage from the Department of Social Services on a form specified by that Department. The amount of witness fees and mileage paid shall be the same as the amount specified in the Government Code for witness fees and mileage.

.2 A witness who is subpoenaed at the request of the county and who appears at the hearing may demand payment for witness fees and mileage from the county on a form specified by the county. The amount of witness fees and mileage paid shall be the same as the amount specified in the Government Code for witness fees and mileage.

22-053 POSTPONEMENTS AND CONTINUANCES FOR ADDITIONAL EVIDENCE

22-053

1 Postponements

- .11 A hearing will be postponed upon request of the claimant prior to the hearing.
 - .111 Any applicable aid pending the hearing shall cease (see Section 22-022.525) unless the claimant establishes good cause as specified in Section 22-053.14.
- .12 A hearing shall be postponed by a hearing officer at the hearing and any applicable aid pending continued if:
 - .121 The claimant establishes good cause as specified in Section 22-053.14.
 - .122 The county has failed to furnish adequate notice within the meaning of Section 22-001.1 and the claimant requests the postponement.
 - .123 The county requests a postponement and the claimant agrees.
- .13 A hearing may be postponed for any other reason at the discretion of the hearing officer.
 - .131 The hearing officer shall order that aid pending be continued only if the postponement is necessary to insure a full and fair hearing and the postponement did not result from any act or omission on the part of the claimant.
- .14 Good cause shall be established if the claimant or authorized representative establishes that the case should be postponed due to:
 - .141 Death in the family.
 - .142 Personal illness or injury.
 - .143 Sudden and unexpected emergencies. Sudden and unexpected emergencies shall include but are not limited to unchangeable medical appointments, court appearances of the claimant, the temporary inability of the claimant to be released from work, or the conflicting schedule of the authorized representative if the conflict is beyond the control of the authorized representative. Vacation or attendance at a social event shall not be regarded as sudden or unexpected emergencies.

2 Continuance for Additional Evidence

If the hearing officer conducting the hearing determines that evidence not available at the hearing is necessary for the proper determination of the case, the hearing officer may:

- .21 Continue the hearing to a later date. In connection therewith, the hearing officer may direct either party to produce additional evidence.
 - .22 Close the hearing and hold the record open for a stated period not to exceed thirty days in order to permit the submission of additional documentary evidence. Such material shall be submitted within a period not to exceed twenty days after the close of the hearing and shall be made available both to the county and to the claimant. The county and claimant shall each have the right to rebut such submitted material during a stated period not to exceed ten days after the submission of the additional evidence. The hearing officer conducting the hearing may order a further hearing if the nature of the additional information or the rebuttal makes a further hearing necessary.
- 3 A hearing shall not be postponed or continued unless:
- .31 The claimant voluntarily and knowingly executes a written waiver of the 90-day period provided in Section 22-060, or
 - .32 The Chief Referee or the hearing officer determines that a decision of the Director can be issued within the 90-day period provided in Section 22-060.

22-055 DISQUALIFICATION OF A HEARING OFFICER

22-055

A hearing officer shall voluntarily disqualify himself or herself and withdraw from any proceeding in which he or she cannot give a fair and impartial hearing or in which he or she has an interest. A party may request that the hearing officer be disqualified upon the grounds that a fair and impartial hearing cannot be held. The hearing officer shall rule on such a request.

22-059 COMMUNICATIONS AFTER HEARING

22-059

Communications to the Department concerning a case subsequent to the hearing shall be excluded from the record and shall be disregarded prior to the adoption and release of the decision of the Director; except that (a) oral and written communications after the hearing concerning the status of the decision, or the date of delivery of additional evidence to be submitted under the provisions of Section 22-053.22, or protesting a hearing officer's determination under Section 22-022.523 with respect to aid pending a hearing, are not improper; and (b) a hearing officer may on his or her own motion or at the request of either party reopen the record for receipt of additional information if all parties are notified of the reason for the reopening and the submission of such evidence conforms to the requirements of Section 22-053.22.

ADMINISTRATIVE DISQUALIFICATION HEARINGS - GENERAL**CHAPTER 22-200 ADMINISTRATIVE DISQUALIFICATION HEARINGS - GENERAL****22-200**

- .1 The regulations in the chapter shall apply to hearings resulting from a CWD's determination supported by documentation that a food stamp administrative disqualification for an intentional Program violation is appropriate and in accordance with CDSS Manual of Policies and Procedures Division 20 Chapter 20-300.
- .2 Administrative disqualification hearings are distinct from state hearings discussed in Chapter 22-000.

22-201 GENERAL PROVISIONS**22-201**

- .1 An administrative disqualification hearing (ADH) at the state level shall be initiated when a county informs the Administrative Adjudications Division (AAD) of the California Department of Social Services (CDSS) that clear and convincing documentary evidence in the CWD's possession indicates that an administrative disqualification is appropriate.
 - .11 The Department shall then assume responsibility for the overall administration of the disqualification hearing process and the conduct of each hearing at the state level.
- .2 An ADH at the local level shall be initiated when a CWD informs the CWD-designated unit responsible for scheduling and conducting an ADH that clear and convincing documentary evidence in the CWD's possession indicates that an administrative disqualification is appropriate.
 - .21 The CWD shall assume responsibility for the overall administration of the disqualification hearing process and the conduct of each hearing at the local level.
- .3 The CWD will remain responsible for:
 - .31 Investigating the case and assessing the respondent prior to the hearing.
 - .32 Presenting the CWD's position during the hearing, and
 - .33 Complying with the hearing decision.
- .4 **Definitions**
 - .41 The definitions in Section 22-001 shall apply to this chapter. The following additional definitions in alphabetical order shall apply wherever the terms are used in this chapter.
 - .411 Administrative Disqualification Decision - Means the written decision issued by the Administrative Law Judge (ALJ) after an administrative disqualification hearing at the state level and by the CWD-designated hearing official after a local level hearing.
 - .412 Notice of Hearing - Means the written notification which initiates an administrative disqualification hearing (see Section 22-202.3) and is provided as follows:
 - (a) At the state level, CDSS shall provide written notification to the respondent and the CWD and
 - (b) At the local level, the CWD shall provide written notification to the respondent and the CWD-designated unit responsible for presenting the case at the local level hearing.
 - .413 Respondent - Means the household member(s) whom the CWD has determined may be subject to administrative disqualification. To the extent the provisions of Chapter 22-000 relating to state hearings apply to administrative disqualification hearings all references to "claimant" in such regulations shall be deemed to refer to "respondent" for purposes of the administrative disqualification hearing.
- .5 **Procedures Governing State Hearings Also Applicable to Administrative Disqualification Hearings.**
 - (a) The following provisions of Chapter 22-000 shall be applicable to administrative disqualification hearings:
 - (1) Section 22-002 relating to determination of time limit;
 - (2) Section 22-010 relating to authorized representatives.
 - (3) Section 22-023.12 relating to assignment of county representatives.
 - (4) Section 22-023.2 relating to duties of county representatives prior to and at the hearing.
 - (5) Section 22-025 relating to situations where the hearing is held in a county other than the responsible county.
 - (6) Section 22-045.1 and 2 relating to the time and place of the hearing.
 - (7) Section 22-049 relating to general rules and procedures at the hearing, excluding .11.
 - (8) Section 22-050 relating to evidence.

ADMINISTRATIVE DISQUALIFICATION HEARINGS - GENERAL

- (9) Section 22-051 relating to the examination of records and issuance of subpoenas.
 - (10) Section 22-052 relating to witness fees and mileage.
 - (11) Section 22-053.2 relating to continuances for additional evidence.
 - (12) Section 22-055 relating to disqualification of Administrative Law Judges.
 - (13) Section 22-059 relating to communications after the hearing
- .6 Both the CWD's representative and the claimant's representative shall have the right to designate another person to be present and advise the representative throughout the hearing. This individual may be a witness who testifies on behalf of the county or claimant and in this circumstance, Section 22-049.12 would not apply. If this individual is a witness, then he/she may not be present as an advisor until after he/she has testified.

22-202 NOTICE OF ADMINISTRATIVE DISQUALIFICATION HEARING

22-202

- .1 When the CWD determines based on clear and convincing evidence that a household member(s) is subject to disqualification from the Food Stamp Program because of a suspected intentional Program violation and believes the household member(s) should be disqualified in accordance with Division 20 chapter 20-300 the CWD shall:
- .11 Notify the Chief Administrative Law Judge in writing; and;
 - .12 Request that an administrative disqualification hearing be scheduled.
 - .121 The notification shall set forth the charges against the respondent and contain a summary of the evidence.
- .2 The request for a state or local level hearing shall be reviewed and signed by a county supervisory employee to ensure that clear and convincing evidence exists for an IPV hearing request.
- .3 CDSS shall monitor that the requests sent pursuant to Sections 22-201.1 and 22-201.2 are appropriate for IPV consideration in that they represent cases in which clear and convincing evidence has been identified to warrant the scheduling of such hearing.
- .31 Upon receipt of the request described in Sections 22-201.1 or 22-201.2, the Department shall schedule an administrative disqualification hearing.
- .4 Waiver of Right to an Administrative Disqualification Hearing
- .41 A waiver request form shall be sent with the Notice required by Section 22-202.5 to the respondent. This waiver request form shall be a written notification which informs the respondent of the possibility of waiving the ADH. This waiver request form shall include:
 - (a) The information that the respondent has 20 days from the date of the notice to submit the signed waiver form to the Department in the case of a state level hearing or to the CWD in the case of a local level hearing. If the respondent fails to sign and return the waiver request to the Department within 20 days from the date of the notice, the ADH shall be held as scheduled.
 - (1) A statement in bold print that says, "**DO NOT SIGN THIS IF YOU DO NOT KNOW WHAT IT MEANS!**."
 - .42 If the respondent voluntarily and knowingly submits a signed waiver of his/her right to an ADH within the 20-day period to the Department in a state level hearing, or to the CWD in a local level hearing, the Department in a state level hearing, or the CWD in a local level hearing, shall submit a signed copy of the waiver to the CWD and shall notify the CWD to initiate the notification of disqualification action and imposition of disqualification penalties in accordance with CDSS' Manual of Policies and Procedures, Division 20, Sections 20-300.24, .3, and .4.
 - .43 If the respondent voluntarily and knowingly submits a signed waiver of his/her right to an ADH within the twenty-day period to the Department, the Department shall submit a signed copy of the waiver to the CWD and shall notify the CWD to initiate the notification of disqualification action and imposition of disqualification penalties in accordance with CDSS' Manual of Policies and Procedures, Division 20, Sections 20-300.24, .3, and .4.
 - .44 The CWD shall inform the respondent by written notice that a request for a state/local level ADH has been filed by the CWD and that he/she may waive the right to an ADH through a pre-hearing waiver process.
 - .441 The written notice shall be provided in person or by mail pursuant to Section 22-202.511 et seq., except Section 22-202.511(a).
 - (a) The notice shall contain a request for the respondent to contact a specified representative of the CWD to set a meeting date, time, and location.
 - .442 The waiver shall be as described in Section 22-202.4.
 - .443 The CWD shall not use threats, coercion, or the promise of leniency with respect to criminal prosecution in obtaining the respondent's signature on a waiver.

.5 Notice of Hearing

.51 The office of the Chief Administrative Law Judge shall provide written notice to the respondent with a copy to the CWD at least 30 days in advance of the date of the hearing or of a consolidated hearing.

.511 The notice shall be mailed Certified Mail - Return Receipt Requested - and shall contain at a minimum:

- (a) The date time and place of the hearing and a notice that the respondent is entitled to a postponement of the scheduled hearing for up to 30 days provided that the request for postponement is made at least 10 days in advance of the date of the scheduled hearing.
- (b) The charges against the respondent.
- (c) A summary of the evidence and how and where **the evidence** can be examined.
- (d) A warning that the decision will be based solely on information provided by the county if the respondent fails to appear at the hearing.
- (e) A warning that an individual found to have committed an intentional Program violation, shall be ineligible to participate in the Food Stamp Program for six months for the first violation, 12 months for the second violation, and permanently for the third violation and a statement of which penalty the CWD believes is applicable to the respondent's case.
- (f) A listing of the respondent's rights as contained in Section 22-049.7.
- (g) A statement that the hearing does not preclude the County, State or Federal government from prosecuting the respondent for the intentional Program violation in a civil or criminal court action, or from collecting an overissuance related to the alleged intentional Program violation.
- (h) A statement that the respondent can call the CWD to get the name and phone number (if available) of someone who can give free legal advice. If free legal advice is not available, the CWD shall provide, when called, the phone number of a lawyer referral service or the local bar association.
- (i) A copy of this chapter and the applicable provisions of chapter 22-000.

22-210 HEARING PROCEDURE

22-220

.1 Local level and state level IPV ADHs shall be conducted pursuant to the applicable provisions of Chapter 22-000.

.11 The Administrative Law Judge shall advise the respondent that he/she may refuse to answer questions during the hearing.

.12 The hearing shall be conducted by an impartial ALJ at the state level, or a hearing official at the local level who has not had previous involvement in the case.

.13 The ALJ and local level hearing officials shall prepare fair, impartial, and independent decisions.

.2 POSTPONEMENTS

At the request of the respondent the hearing may be postponed by a total Period of up to 30 days provided that the request for postponement is made at least 10 days in advance of the date of the scheduled hearing.

.21 The time limit for rendering a decision on the hearing may be extended for the length of time the hearing is postponed.

.3 CANCELLATION OF HEARING

If after a hearing has been scheduled the CWD finds that further evidence indicates that an administrative disqualification is no longer appropriate it shall notify the Chief Administrative Law Judge.

.31 The Chief Administrative Law Judge shall then notify the respondent and CWD that the administrative disqualification hearing is cancelled.

.4 RESPONDENT FAILS TO ATTEND HEARING

.41 If the respondent cannot be located or fails to appear at a hearing the hearing shall be conducted in the absence of the respondent.

.411 The hearing officer will review the evidence presented by the county and prepare a decision based upon that evidence.

.42 If the resident established good cause for failure to attend the hearing a new hearing shall be scheduled.

.421 The criteria for good cause shall be the criteria set forth in Section 22-053.14

.422 The respondent may establish good cause for failure to attend the hearing no later than 10 days after receiving the hearing decision.

- .423 The respondent may establish good cause by contacting the Chief Administrative Law Judge by letter or telephone. (a) Chief Administrative Law Judge shall have authority to require that the respondent submit verification of good cause.
- .424 The respondent and the CWD shall be notified in writing of the good cause determination and the determination shall be placed into the hearing record.
- .425 If good cause is established the hearing decision shall have no effect on the respondent's status. Nor shall it effect the household's continuing benefit except as provided in Section 63-805.4.
 - (a) Pending the rehearing decision any benefits lost to the household as a result of the rescinded decision shall be restored in accordance with Section 63-802.1

22-215 LOCAL LEVEL HEARINGS

- .1 Subject to CDSS approval of a county's ADH plan, counties may choose to provide ADHs at the local level with a right to appeal to a state level de novo hearing.
- .2 If a local disqualification hearings determines that a household member committed an IPV, the notification of hearing decision specified in Section 22-220.2 shall also inform the household member:
 - .21 Of the right to appeal the local level decision within 25 days after the date the notice has been sent to the respondent by the county (see Section 22-340.6);
 - .22 Of the date the disqualification shall take effect unless a state level hearing is requested; and
 - .23 That benefits shall be continued pending a state level de novo hearing if the household is otherwise eligible.
- .3 If the household member appeals the local level decision, the advance notice of the state level hearing, as specified in Section 22-202 shall be mailed to the respondent at least 15 days prior to the date of the scheduled state level hearing and shall also inform the household member that the local hearing decision shall be upheld if the household or its representative fails to appear without good cause for the hearing.
- .4 The local level hearing decision shall be made within 90 days from the date of the notice scheduling the hearing.
- .5 When a local level decision is appealed, CDSS shall conduct the state level hearing, arrive at a decision, and notify the household member and local agency of the decision within 60 days of the date the household member appealed its case.
 - .51 The local level decision shall not be taken into consideration by the state ALJ in making the final determination.
- .6 In all other respects, local level disqualification hearings shall be handled in accordance with the procedures specified in this chapter for state level hearings.

22-220 HEARING DECISION

- .1 After the hearing has been closed the Administrative Law Judge shall prepare a written decision.
- .2 The decision shall include:
 - .21 A statement of facts.
 - .22 The statutes and regulations involved.
 - .23 The reasoning which supports the decision.
 - .24 Responses to arguments raised by the respondent.
- .3 Any determination of an intentional Program violation which is made in such a decision shall be based upon clear and convincing evidence.
- .4 The hearing officer's proposed decision shall be subject to the review of the Chief Administrative Law Judge and the Director.
 - .41 The Chief Administrative Law Judge or Director shall have the authority to reject the proposed decision of the Administrative Law Judge and prepare a separate decision based upon the record in the case or to order an additional hearing.
 - .42 Any such decision shall be subject to the provisions of Section 22-220.2.
- .5 A copy of the hearing decision shall be mailed to the respondent and to the CWD.
 - .51 If the decision is adverse to the respondent, the decision shall notify the respondent of the right to judicial review and shall advise the respondent that, if the court decides the case in his/her favor, he/she shall be entitled to reasonable attorney's fees and the cost of suit.

22-230 DISPOSITION OF ADMINISTRATIVE DISQUALIFICATION HEARINGS

22-230

- .1 All administrative disqualification hearing decisions shall be mailed within 90 days of the date of the notice of hearing described in Section 22-202.3.
 - .11 If the decision results in upholding the disqualification of the respondent, the CWD shall initiate the administrative action in accordance with CDSS Manual of Policies and Procedures, Division 20, Chapter 20-000.
 - .12 If the hearing is postponed (see Section 22-210.2), the 90-day period shall be extended by the period of time that the case is postponed.
 - .13 If a new hearing is scheduled pursuant to Section 22-210.42, a new 90-day period shall commence from the date the respondent and CWD are notified of the new hearing.
 - .14 If a hearing is continued or postponed (see Section 22-053) the respondent shall be given a written notice that explains that the time limit for rendering a decision will be extended by the same number of days as the hearing is postponed or continued.
 - .15 An administrative disqualification decision is not subject to the provisions of Section 22-065.
 - .151 There is no right to a rehearing regarding a finding of intentional Program violation.
 - .152 A decision finding intentional Program violation shall inform the respondent concerning the right to judicial review.

22-240 CONSOLIDATION OF ADMINISTRATIVE DISQUALIFICATION HEARING WITH A STATE HEARING

22-240

- .1 At his/her discretion or upon the request of the respondent or the CWD, the Chief Administrative Law Judge shall have the authority to consolidate requests for a state hearing with an administrative disqualification hearing.
 - .11 If the factual issues arise out of the same, or related circumstances and the household receives prior notice (as required in Section 22-202.3) then the hearings will be combined. However, the respondent, upon request, shall be allowed to waive the 30-day advance notice when the hearing requests are consolidated.
 - .12 In such cases, although only one actual hearing may be held, the procedures governing the administrative disqualification hearing aspect of the case and the state hearing aspect shall be separately identified and followed.
 - .13 The hearing officer shall have the authority to:
 - .131 Sever the proceedings and hold each hearing separately.
 - .132 Postpone or continue the state hearing and not postpone or continue the administrative disqualification hearing or vice versa.
 - .14 If a state hearing case is consolidated under this section, the time limits for its disposition shall be the same as for the administrative disqualification hearing, (see Section 22-230).
 - .15 If a state hearing case is consolidated under this section, the respondent shall lose the right to a subsequent state hearing on the amount of the claim.
- .2 A pending administrative disqualification hearing shall not affect the individual's or household's right to be certified or to participate in the Food Stamp Program.
- .3 In the Food Stamp Program, when the determination of intentional Program violation is reversed by the court, the CWD shall reinstate the individual if the household eligible in accordance with procedures in CDSS Manual of Policies and Procedures, Division 63 Section 63 805.2.

SAMPLE

FREE LEGAL SERVICES - SAN JOAQUIN COUNTY

California Rural Legal Assistance
242 N. Sutter Street, Suite 411
Stockton, CA 95202
(209) 946-2676

COUNTY INFORMATION LETTER

County: _____

CASE NUMBER

The county has filed a request with the state for an Administrative Disqualification Hearing (ADH) for an Intentional Program Violation (IPV) to be held on your ☐ Aid to Families with Dependent Children (AFDC) and/or ☐ Food Stamp (FS) case. If you are found to have committed an IPV, your benefits will be stopped for 6 months, 12 months, or permanently. See attached Waiver Form, DPA 479 (top of page 2), to find out which penalty the county proposes in your case. For FS, if the reason for the IPV was that you had earned income that you purposely did not report, there are additional penalties. (See attached form DPA 479 for more information about all of these penalties.)

Before the state hearing is held, you may discuss this ADH process, review the evidence the county has, and decide whether you wish to waive your right to a hearing.

☐ Please call _____ at _____, by _____ to
(name) (telephone no.) (date)
schedule a meeting with the county.

☐ An appointment has been made for you to meet with _____,
(name)
_____ on _____, at _____ (am/pm).
(title) (date) (time)

or

☒ You may waive your right to a hearing without meeting with anyone. If you want to do this, you must:

- Review the county's allegation of the IPV (See attached Form Temp DPA 435). This tells you what actions you took and it lists the evidence the county will submit at the hearing. If you want to look at the evidence, follow the directions indicated above to make an appointment.
- Review the attached waiver. The ADH waiver tells you how many months you could be disqualified from getting benefits in AFDC and/or FS if you are found to have committed an IPV at a hearing or if you sign the attached waiver form.
- Sign the waiver form and mail it in the enclosed return envelope.

If you fail to respond within 20 days to this notice or meet for the scheduled appointment, your hearing will be scheduled. You will be notified by the State of the date, time and location for your hearing.

For free legal advice in your county, contact: